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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

JASON A. MAHE,

Plaintiff

v.

HARTMAN, et. al.,

Defendants

Case No.: 3:21-cv-00069-MMD-WGC

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF No. 7

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Before the court is Plaintiff's Motion to be Immediately Heard Due to Risk of Life in Jeopardy. (ECF No. 7.) The court directed the Attorney General's Office to file a notice indicating whether it would enter a limited notice of appearance for the purposes of responding to this motion, and if so, to file a response. (ECF No. 11.) The Attorney General's Office did enter a notice of limited appearance, though it states it is for purposes of engaging in settlement discussions only. (ECF No. 16.) The Attorney General's Office also filed two responses addressing Plaintiff's requests for injunctive relief. (ECF Nos. 17, 18.)

After a thorough review, it is recommended that Plaintiff's motion be denied.

**I. BACKGROUND**

Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC), proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 5.) Plaintiff filed a complaint, which the court screened. (ECF No. 12.) Plaintiff was allowed to proceed with

1 an Eighth Amendment failure to protect claim against Ortiz based on allegations that Plaintiff  
2 served as an informant to the Office of the Inspector General (IG), reporting on "dirty" NDOC  
3 employees, which has caused a risk to his safety, including assault. Plaintiff met with IG  
4 investigator Ortiz, who promised him an out-of-state transfer for his protection, but this was  
5 reneged when he and Ortiz had a falling out. Plaintiff claims that because of his history as an  
6 informant, he is not safe on any NDOC yard.

7 Plaintiff was allowed to proceed with a retaliation claim against Conlin based on  
8 allegations that Conlin tried to take away his wheelchair because Plaintiff reported Conlin's  
9 friend (Bartlett) for the assault. In addition, he was permitted to proceed with a retaliation and  
10 excessive force claims against Hartman based on allegations that when Plaintiff spoke to  
11 Hartman about the retaliation and threats he was facing, Hartman responded by physically  
12 attacking and injuring Plaintiff.

13 Plaintiff was further allowed to proceed with an Eighth Amendment deliberate  
14 indifference to serious medical needs claim against Conlin, Naughten, RN Manager Megan, RN  
15 Melissa and RN Malorey based on allegations that he suffered injuries and conditions requiring  
16 him to use a wheelchair and not a walker, but they unreasonably acted to deprive him of the  
17 wheelchair, causing him to suffer in pain.

18 Plaintiff's other claims were dismissed with and without leave to amend, and Plaintiff has  
19 not timely filed an amended complaint.

20 In ECF No. 7, Plaintiff requests an order that he be moved out of NDOC custody.

## 21 **II. LEGAL STANDARD**

22 The purpose of a preliminary injunction or temporary restraining order is to preserve the  
23 status quo if the balance of equities so heavily favors the moving party that justice requires the

1 court to intervene to secure the positions until the merits of the action are ultimately determined.  
2 *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

3 Injunctions and temporary restraining orders are governed procedurally by Federal Rule of  
4 Civil Procedure 65, but case law outlines the substantive requirements a party must satisfy to obtain  
5 an injunction or restraining order. *See Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund,*  
6 *Inc.*, 527 U.S. 308, 319 (1999) ("[T]he general availability of injunctive relief [is] not altered by  
7 [Rule 65] and depend[s] on traditional principles of equity jurisdiction.").

8 A preliminary injunction is an “extraordinary and drastic remedy” that is “never awarded  
9 as of right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citations omitted). Instead, in every  
10 case, the court “must balance the competing claims of injury and must consider the effect on each  
11 party of the granting or withholding of the requested relief.” *Winter v. Natural Resources Defense*  
12 *Council, Inc.*, 555 U.S. 7, 23 (2008) (internal quotation marks and citation omitted). The instant  
13 motion requires that the court determine whether Plaintiff has established the following: (1) he is  
14 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of  
15 preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public  
16 interest. *Id.* at 20 (citations omitted).).

17 The Prison Litigation Reform Act (PLRA) mandates that prisoner litigants must satisfy  
18 additional requirements when seeking preliminary injunctive relief against prison officials. The  
19 PLRA provides, in relevant part:

20 Preliminary injunctive relief must be narrowly drawn, extend no  
21 further than necessary to correct the harm the court finds requires  
22 preliminary relief, and be the least intrusive means necessary to  
23 correct that harm. The court shall give substantial weight to any  
adverse impact on public safety or the operation of a criminal  
justice system caused by the preliminary relief and shall respect the  
principles of comity set out in paragraph (1)(B) in tailoring any  
preliminary relief.

1 18 U.S.C. § 3626(a)(2). Thus, § 3626(a)(2) limits the court's power to grant preliminary injunctive  
2 relief to inmates. *See Gilmore v. People of the State of California*, 220 F.3d 987, 998 (9th Cir.  
3 2000). "Section 3626(a)...operates simultaneously to restrict the equity jurisdiction of federal  
4 courts and to protect the bargaining power of prison administrators-no longer may courts grant or  
5 approve relief that binds prison administrators to do more than the constitutional minimum." *Id.* at  
6 999.

7 A temporary restraining order is appropriate when irreparable injury may occur before  
8 the court can hold a hearing on a motion for preliminary injunction. *See* 11A The Late Charles  
9 Alan Wright & Arthur R. Miller, et. al., *Federal Practice and Procedure*, § 2951 (3d ed. 1999).  
10 The standard for issuing a temporary restraining order is identical to the standard for a  
11 preliminary injunction. *See Stuhlberg Int'l Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240  
12 F.3d 832, 839 n. 7 (9th Cir. 2001); *see also* 11A The Late Charles Alan Wright & Arthur R.  
13 Miller, et. al., *Federal Practice and Procedure*, § 2951 (3d ed. 1999) ("When the opposing party  
14 actually receives notice of the application for a restraining order, the procedure that is followed  
15 does not differ functionally from that on an application for preliminary injunction and the  
16 proceeding is not subject to any special requirements."). A temporary restraining order "should  
17 be restricted to serving [its] underlying purpose of preserving the status quo and preventing  
18 irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose*  
19 *Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

20 In addition, in seeking injunctive relief, "there must be a relationship between the injury  
21 claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint."  
22 *Pacific Radiation Oncology, LLC v. Queen's Medical Center*, 810 F.3d 631, 635 (9th Cir. 2015).  
23 "This requires a sufficient nexus between the claims raised in a motion for injunctive relief and

1 the claims set forth in the underlying complaint itself." *Id.* "The relationship between the  
2 preliminary injunction and the underlying complaint is sufficiently strong where the preliminary  
3 injunction would grant 'relief of the same character as that which may be granted finally." *Id.*  
4 (quoting *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945)). "Absent that  
5 relationship or nexus, the district court lacks authority to grant the relief requested." *Id.*

### 6 **III. DISCUSSION**

7 In ECF No. 7, Plaintiff states that on April 11, 2021, Plaintiff was informed by another  
8 inmate that the NDOC gang Inspector General's Office (IG) investigator Becker told of all of  
9 Plaintiff's dealings as a confidential informant. He claims he saw gang members signing about  
10 what Becker told them, and as such, all of NDOC is out to kill him, and he is in danger anywhere  
11 in NDOC custody. He states that he has the names of three correctional officers he will divulge  
12 privately to the court to verify his claim. He asks to be moved out of NDOC custody.

13 In response, the Attorney General's Office represents that counsel spoke to Adolfo  
14 Escutia, who is with the IG's Office, who states that Plaintiff is not a confidential informant for  
15 the IG's Office. (ECF No. 17 at 4:18-20.)

16 There are several deficiencies with Plaintiff's motion which result in the court's  
17 recommendation that the motion for injunctive relief be denied without prejudice. First, Plaintiff  
18 does not demonstrate a likelihood of success on the merits of his failure to protect claim and he  
19 has not sufficiently established a likelihood of suffering irreparable harm in the absence of  
20 injunctive relief. He includes sparse details in his motion about what exactly Becker told other  
21 inmates, or how he knew that the gang inmates were signing about what Becker told them.  
22 Plaintiff was allowed to file a reply brief, but did not file one and address the Attorney General's  
23 Office assertion that Plaintiff was not serving as a confidential informant for the IG's office.

1 For these reasons, Plaintiff's motion should be denied without prejudice.

2 **IV. RECOMMENDATION**

3 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING**  
4 Plaintiff's motion at ECF No. 7 without prejudice.

5 The parties should be aware of the following:

6 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
7 this Report and Recommendation within fourteen days of being served with a copy of the Report  
8 and Recommendation. These objections should be titled "Objections to Magistrate Judge's  
9 Report and Recommendation" and should be accompanied by points and authorities for  
10 consideration by the district judge.

11 2. That this Report and Recommendation is not an appealable order and that any notice of  
12 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
13 until entry of judgment by the district court.

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15 Dated: May 28, 2021

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William G. Cobb  
United States Magistrate Judge  
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